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FROM AMEMBASSY, TOKYO

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DESP. NO.

TO THE DEPARTMENT OF STATE, WASHINGTON.

December 17, 1952

REF: Deptel 1451, December 9

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SUBJECT: Transmittal of Draft Text of FCN Treaty

Enclosed are 15 copies of the Draft FCN Treaty currently under discussion between the Embassy and the Japanese Government. The enclosed draft, copies of which were requested in the Department's telegram under reference, incorporates all changes and additions on which agreement has been reached to date.

The Ministry of Foreign Affairs has just informed the Embassy that the appropriate designation to be used in the Preamble is "The Government of Japan: Katsuo Okazaki, Minister for Foreign Affairs of Japan". The Embassy invited the Ministry's attention to the fact that other FCN Treaties concluded by the United States made reference to the sovereign of the other country, or to his Prime Minister and that it was perhaps inappropriate for the term "The Government of Japan" to be used in conjunction with the term "The President of the United States of America". The Treaties Bureau of the Ministry, however, declared that under the present Constitution neither the Emperor of Japan nor the Prime Minister is empowered to designate a Plenipotentiary for the purpose of concluding a treaty. The Treaties Bureau declared that it was impossible for any term other than "The Government of Japan" to be used in this connection. It will be appreciated if the Department would inform the Embassy whether the use of the proposed term in the Preamble is acceptable.

For the Ambassador:

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DRAFT TREATY  
OF  
FRIENDSHIP, COMMERCE AND NAVIGATION  
BETWEEN  
UNITED STATES AND JAPAN

Dec. 1952

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\*The table of contents is included merely to facilitate study of the draft and not as a part of the proposed treaty.

PREAMBLE

The United States of America and Japan, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of encouraging closer economic and cultural relations between their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements promoting mutually advantageous commercial intercourse, encouraging mutually beneficial investments, and establishing mutual rights and privileges, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of most-favored-nation treatment unconditionally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

and

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:



ARTICLE I

1. Nationals of either Party shall be permitted to enter the territories of the other Party and to remain therein: (a) for the purpose of carrying on trade between the territories of the two Parties and engaging in related commercial activities; (b) for the purpose of developing and directing the operations of (an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital; and (c) for other purposes subject to the laws relating to the entry and sojourn of aliens.

2. Nationals of either Party, within the territories of the other Party, shall be permitted: (a) to travel therein freely, and to reside at places of their choice; (b) to enjoy liberty of conscience; (c) to hold both private and public religious services; (d) to gather and to transmit material for dissemination to the public abroad; and (e) to communicate with other persons inside and outside such territories by mail, telegraph and other means open to general public use.

3. The provisions of the present Article shall be subject to the right of either Party to apply measures that are necessary to maintain public order and protect the public health, morals and safety.

ARTICLE II

1. Nationals of either Party within the territories of the other Party shall be free from molestations of every kind, and shall receive the most constant protection and security, in no case less than that required by international law.

2. If, within the territories of either Party, a national of the other Party is taken into custody, the nearest consular representative of his country shall on the demand of such national be immediately notified. Such national shall: (a) receive reasonable and humane treatment; (b) be formally and immediately informed of the accusations against him; (c) be brought to trial as promptly as is consistent with the proper preparation of his defense; and (d) enjoy all means reasonably necessary to his defense, including the services of competent counsel of his choice.

ARTICLE III

1. Nationals of either Party shall be accorded national treatment in the application of laws and regulations within the territories of the other Party that establish a pecuniary compensation, or other benefit or service, on account of disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in paragraph 1 of the present Article, nationals of either Party shall, within the territories of the other Party, be accorded national treatment in the application of laws and regulations establishing compulsory systems of social security, under which benefits are paid without an individual test of financial need: (a) against loss of wages or earnings due to old age, unemployment, sickness or disability, or (b) against loss of financial support due to the death of father, husband or other person on whom such support had depended.

ARTICLE IV

1. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights. It is understood that companies of either Party not engaged in activities within the territories of the other Party may enjoy such access therein without any requirement of registration or similar requirements.

2. Contracts entered into between nationals and companies of either Party and nationals and companies of the other Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other Party. Awards duly rendered pursuant to any such contracts, which are final and enforceable under the laws of the place where rendered, shall be deemed conclusive in enforcement proceedings brought before the courts of competent jurisdiction of either Party, and shall be entitled to be declared enforceable by such courts, except where found contrary to public policy. When so declared, such awards shall be entitled to privileges and measures of enforcement appertaining to awards rendered locally. It is understood, however, that awards rendered outside the United States of America shall be entitled in any court in any State thereof only to the same measure of recognition as awards rendered in other States thereof.

ARTICLE V

1. Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established, or in the capital, skills, arts or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology it needs for its economic development.

2. The Parties undertake to cooperate in furthering the interchange and use of scientific and technical knowledge, particularly in the interests of increasing productivity and improving standards of living within their respective territories.



ARTICLE VI

1. Property of nationals and companies of either Party shall receive the most constant protection and security within the territories of the other Party.

2. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either Party located within the territories of the other Party shall not be subject to unlawful entry or molestation. Official searches and examinations of such premises and their contents, when necessary, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

3. Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

4. Nationals and companies of either Party shall in no case be accorded, within the territories of the other Party, less than national treatment and most-favored-nation treatment with respect to the matters set forth in paragraph 2 and 3 of the present Article. Moreover, enterprises in which nationals and companies of either Party have a substantial interest shall be accorded, within the territories of the other Party, not less than national treatment and most-favored-nation treatment in all matters relating to the taking of privately owned enterprises into public ownership and to the placing of such enterprises under public control.



ARTICLE VII

1. Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for profit (business activities) within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful juridical entity. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (b) to organize companies under the general company laws of such other Party, and to acquire majority interests in companies of such other Party; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party.

2. Each Party reserves the right to limit the extent to which aliens may within its territories establish, acquire interests in, or carry on public utilities enterprises or enterprises engaged in shipbuilding, air or water transport, banking involving depository or fiduciary functions, or the exploitation of land or other natural resources. However, new limitations imposed by either Party upon the extent to which aliens are accorded national treatment, with respect to carrying on such activities within its territories shall not be applied as against enterprises which are engaged in such activities therein at the time such new limitations are adopted and which are owned or controlled by nationals and companies of the other Party.

Moreover, neither Party shall deny to transportation, communications and banking companies of the other Party the right to maintain branches and agencies to perform functions necessary for essentially international operations in which they are permitted to engage.

3. The provisions of paragraph 1 shall not prevent either Party from prescribing special formalities in connection with the establishment of alien-controlled enterprises within its territories; but such formalities may not impair the substance of the rights set forth in said paragraph.

4. Nationals and companies of either Party, as well as enterprises controlled by such nationals and companies, shall in any event be accorded most-favored-nation treatment with reference to the matters treated in the present Article.

ARTICLE VIII

1. Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice. Moreover, such nationals and companies shall be permitted to engage accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of such other Party, for the particular purpose of making examinations, audits and technical investigations exclusively for, and rendering reports to, such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.

2. Nationals of either Party shall not be barred from practicing the professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications and competence that are applicable to nationals of such other Party.

3. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other Party, and shall be accorded the right to form associations for that purpose under the laws of such other Party.

ARTICLE IX

1. Nationals and companies of either Party shall be accorded within the territories of the other Party: (a) national treatment with respect to leasing land, buildings and other immovable property appropriate to the conduct of activities in which they are permitted to engage pursuant to Articles VII and VIII and for residential purposes; and with respect to occupying and using such property; and (b) other rights in immovable property permitted by the applicable laws of the other Party or any subdivisions, territories and possessions thereof.

2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment and most-favored-nation treatment with respect to acquiring, purchase, lease, or otherwise, and with respect to owning and possessing; movable property of all kinds, both tangible and intangible. However, either Party may impose restrictions on alien ownership of materials dangerous from the standpoint of public safety and alien ownership of interests in enterprises carrying on the activities listed in the first sentence of paragraph 2 of Article VII, but only to the extent that this can be done without impairing the rights and privileges secured by Article VII or by other provisions of the present treaty.

4. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment and most-favored-nation treatment with respect to disposing of property of all kinds.



ARTICLE X

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment with respect to obtaining and maintaining patents of invention,, and with respect to rights in trade marks, trade names, trade labels and industrial property of every kind.

ARTICLE XI

1. Nationals of either Party residing within the territories of the other Party, and nationals and companies of either Party engaged in trade or other gainful pursuit or in scientific, educational, religious or philanthropic activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party, more burdensome than those borne by nationals and companies of such other Party.

2. With respect to nationals of either Party who are neither resident nor engaged in trade or other gainful pursuit within the territories of the other Party, and with respect to companies of either Party which are not engaged in trade or other gainful pursuit within the territories of the other Party, it shall be the aim of such other Party to apply in general the principle set forth in paragraph 1 of the present Article.

3. Nationals and companies of either Party shall in no case be subject, within the territories of the other Party, to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country.

4. In the case of companies of either Party engaged in trade or other gainful pursuit within the territories of the

other Party, and in the case of nationals of either Party engaged in trade or other gainful pursuit within the territories of the other Party but not resident therein, such other Party shall not impose or apply any tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of companies organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

5. Each Party reserves the right to: (a) extend specific tax advantages on the basis of reciprocity; (b) accord special tax advantages by virtue of agreements for the avoidance of double taxation or the mutual protection of revenue; and (c) accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature with respect to income taxes and inheritance taxes than are accorded to other non-resident persons.

ARTICLE XII

1. Nationals and companies of either Party shall be accorded by the other Party national treatment and most-favored-nation treatment with respect to payments, remittances and transfers of funds or financial instruments between the territories of the two Parties as well as between the territories of such other Party and of any third country.

2. Neither Party shall impose exchange restrictions as defined in paragraph 5 of the present Article except to the extent necessary to prevent its monetary reserves from falling to a very low level or to effect a moderate increase in very low monetary reserves. It is understood that the provisions of the present Article do not alter the obligations either Party may have to the International Monetary Fund or preclude imposition of particular restrictions whenever the Fund specifically authorizes or requests a Party to impose such particular restrictions.

3. If either Party imposes exchange restrictions in accordance with paragraph 2 above, it shall, after making whatever provision may be necessary to assure the availability of foreign exchange for goods and services essential to the health and welfare of its people, make reasonable provision for the withdrawal, in foreign exchange in the currency of the other Party, of: (a) the compensation referred to in Article VI, paragraph 3, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments, and capital transfers, giving consideration to special needs for other transactions. If more than one rate of exchange is in force, the rate applicable to such withdrawals

shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

4. Exchange restrictions shall not be imposed by either Party in a manner unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade, and other interests of the nationals and companies of the other Party, nor to the competitive position thereof.

5. The term "exchange restrictions" as used in the present Article includes all restrictions, regulations, charges, taxes, or other requirements imposed by either Party which burden or interfere with payments, remittances, or transfers of funds or of financial instruments between the territories of the two Parties.



ARTICLE XIII

Commercial travelers representing nationals and companies of either Party engaged in business within the territories thereof shall, upon their entry into and departure from the territories of the other Party and during their sojourn therein, be accorded most-favored-nation treatment in respect to the customs and other matters, including, subject to the exceptions in paragraph 5 of Article XI, taxes and charges applicable to them, their samples and the taking of orders, and regulations governing the exercise of their functions.

ARTICLE XIV

1. Each Party shall accord most-favored-nation treatment to products of the other Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation.

2. Neither Party shall impose restrictions or prohibitions on the importation of any product of the other Party, or on the exportation of any product to the territories of the other Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either Party imposes quantitative restrictions on the importation or exportation of any product in which the other Party has an important interest:

- (a) It shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and
- (b) If it makes allotments to any third country, it shall afford such other Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product.

4. Either Party may impose prohibitions or restrictions on sanitary, or other customary grounds of a non-commercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other Party.

5. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to all matters relating to importation and exportation.

6. The provisions of the present Article shall not apply to advantages accorded by either Party:

(a) to products of its national fisheries;

(b) to adjacent countries in order to facilitate frontier traffic; or

(c) by virtue of a customs union or free-trade area of which it may become a member, so long as it informs the other Party of its plans and affords such other Party adequate opportunity for consultation.

7. Notwithstanding the provisions of paragraph 2 and 3

(b) of the present Article, a Party may apply restrictions or controls on importation and exportation of goods that have effect equivalent to, or which are necessary to make effective, exchange restrictions applied pursuant to Article XII. However, such restrictions shall depart no more than necessary from the aforesaid paragraphs and shall be conformable with a policy designed to promote the maximum development of non-discriminatory foreign trade and to expedite the attainment both of a balance-of-payment position and of monetary reserves which will obviate the necessity of such restrictions.

ARTICLE XV

1. Each Party shall promptly publish laws, regulations and administrative rulings of general application pertaining to rates of duty, taxes or other charges, to the classification of articles for customs purposes, and to requirements or restrictions on imports and exports or the transfer of payments therefore, or affecting their sale, distribution or use; and shall administer such laws, regulations and rulings in a uniform, impartial and reasonable manner. As a general practice, new administrative requirements or restrictions affecting imports, with the exception of those imposed on sanitary grounds or for reasons of public safety, shall not go into effect before the expiration of 30 days after publication, or alternatively, shall not apply to products en route at time of publication.

2. Each Party shall provide an appeals procedure under which nationals and companies of the other Party, and importers of products of such other Party, shall be able to obtain prompt and impartial review, and correction when warranted of administrative action relating to customs matters, including the imposition of fines and penalties, confiscations, and rulings on questions of customs classification and valuation by the administrative authorities. Penalties imposed for infractions of the customs and shipping laws and regulations concerning documentation shall, in cases resulting from clerical errors or when good faith can be demonstrated, be no greater than necessary to serve merely as a warning.

3. Neither Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either Party.

ARTICLE XVI

1. Products of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment in all matters affecting internal taxation, sale, distribution, storage and use.

2. Articles produced by nationals and companies of either Party within the territories of the other Party, or by companies of the latter Party controlled by such nationals and companies, shall be accorded therein treatment no less favorable than that accorded to like articles of national origin by whatever person or company produced, in all matters affecting exportation, taxation, sale, distribution, storage and use.



ARTICLE XVII

1. Each Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other Party solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.

2. Each Party shall accord to the nationals, companies and commerce of the other Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country, with respect to: (a) the governmental purchase of supplies, (b) the awarding of concessions and other government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.



ARTICLE XVIII

1. The two Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among such enterprises, may have harmful effects upon commerce between their respective territories. Accordingly, each Party agrees upon the request of the other Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminate such harmful effects.

2. The Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and companies of the other Party. Accordingly, such private enterprises shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions or otherwise. The foregoing rule shall not apply, however, to special advantages given in connection with: (a) manufacturing goods for government use, or supplying goods and services to the government for government use; or (b) supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

3. No enterprise of either Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages

in commercial, industrial, shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

ARTICLE XIX

1. Between the territories of the two Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.

3. Vessels of either Party shall have liberty, on equal terms with vessels of the other Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters of such other Party.

4. Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other Party; and such products shall be accorded treatment no less favorable than that accorded to like products carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature.

5. Vessels of either Party, in case of shipwreck, stranding, or of being forced to put into the ports, places and waters of the other Party, whether or not open to foreign commerce and navigation, shall enjoy the same assistance and protection as are in like cases enjoyed by vessels of such other Party or of any third country, and shall not be subject to any duties or charges other than those which would be payable in like

circumstances by vessels of such other Party or of any third country. The cargoes of such vessels of either Party and all articles salvaged from them shall be exempt from customs duties unless entered for consumption within the territories of the other Party; but articles not entered for consumption may be subject to measures for the protection of the revenue pending their exit from the country.

6. Notwithstanding any other provision of the present Treaty, each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade and inland navigation, or may admit foreign vessels thereto only on a reciprocity basis.

7. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraphs 2 and 5 of the present Article, include fishing vessels or vessels of war.

ARTICLE XX

There shall be freedom of transit through the territories of each Party by the routes most convenient for international transit:

- (a) for nationals of the other Party, together with the baggage;
- (b) for other persons, together with their baggage, enroute to or from the territories of such other Party; and
- (c) for products of any origin en route to or from the territories of such other Party.

Such persons and things in transit shall be exempt from customs duties, from duties imposed by reason of transit, and from unreasonable charges and requirements; and shall be free from unnecessary delays and restrictions. They shall, however, be subject to measures referred to in paragraph 3 of Article II, and to nondiscriminatory regulations necessary to prevent abuse of the transit privilege.

ARTICLE XXI

1. The present Treaty shall not preclude the application of measures:

- (a) regulating the importation or exportation of gold or silver;
- (b) relating to fissionable materials, to radioactive by-products of the utilization or processing thereof, or to materials that are the source of fissionable materials;
- (c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;
- (d) necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests; and
- (e) denying to any company in the ownership or direction of which nationals of any third country or countries have directly or indirectly the controlling interest, the advantages of the present Treaty, except with respect to recognition of juridical status and with respect to access to courts of justice and to administrative tribunals and agencies.

2. The most-favored-nation provisions of the present Treaty relating to the treatment of goods shall not apply to advantages accorded by the United States of America or its Territories and possessions to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone.



3. The provisions of the present Treaty relating to the treatment of goods shall not preclude action by either Party which is required or specifically permitted by the General Agreement on Tariffs and Trade during such time as such Party is a contracting party to the General Agreement. Moreover, either Party may withhold advantages negotiated under the aforesaid Agreement from those countries which by their own choice are not contracting parties thereto.

4. Nationals of either Party admitted into the territories of the other Party for limited purposes shall not enjoy rights to engage in gainful occupations in contravention of limitations expressly imposed, according to law, as a condition of their admittance.

5. Nothing in the present Treaty shall be deemed to grant or imply any right to engage in political activities.

ARTICLE XXII

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

3. As used in the present Treaty, the term "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party.

4. National treatment accorded under the provisions of the present Treaty to companies of Japan shall, in any State, Territory or possession of the United States of America, be the treatment accorded therein to companies created or organized in other States, Territories, and possessions of the United States of America.

ARTICLE XXIII

The territories to which the present Treaty extends shall comprise all areas of land and water under the sovereignty or authority of each Party, other than the Panama Canal Zone and the Trust Territory of the Pacific Islands, except to the extent that the President of the United States of America shall by proclamation extend provisions of the Treaty to such Trust Territory.

ARTICLE XXIV

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

ARTICLE XX

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Washington as soon as possible.

2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either Party may, by giving one year's written notice to the other Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and Japanese languages, both equally authentic, at Tokyo, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred fifty \_\_\_\_\_.



PROTOCOL

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and Japan, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Treaty:

1. The term "access to the courts of justice and to administrative tribunals and agencies" as used in Article V, paragraph 1, comprehends, among other things, legal aid and security for costs and judgment.

2. The provisions of Article VI, paragraph 3, providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.

3. The term "public utility enterprises" as used in Article VII, paragraph 2, is deemed to include enterprises engaged in furnishing communications services, water supplies, transportation by bus, truck or rail, or in manufacturing and distributing gas or electricity, to the general public.

4. With reference to Article VII, paragraph 4, either Party may require that rights to engage in mining shall be dependent on reciprocity.

5. The provisions of Article VIII, paragraph 2, shall not extend to the profession of notary public or port pilot.

6. Either Party may impose restrictions on the introduction of foreign capital as may be considered necessary to protect its monetary reserves as provided in Article XIII, paragraph 2.

7. With reference to Article XIV, paragraph 4, it is understood that either Party, acting in accordance with its laws, may



prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods with respect to which there has been failure to comply with marking requirements, established to assure that the true geographic or commercial origin of such goods is correctly represented. Furthermore, each Party agrees to take appropriate steps to prevent misrepresentations, direct or indirect, that goods produced or sold in or exported from its territory originate within the territory of the other Party or any distinctive place within such territory.

8. During periods of emergency resulting in reduced availabilities of industrial raw materials and basic foodstuffs, the provisions of Article XVI, paragraph 1, of the present Treaty shall not prevent the application by either Party of needed controls over the internal sale, distribution or use of imported articles of these categories which may be in short supply, other than or different from controls applied with respect to like articles of national origin. If imposed, such controls over the internal distribution of imported articles shall be applied by either Party in such a manner as to minimize injury to the competitive position within its territories of the commerce of the other Party, and shall be continued no longer than required by the supply situation.

9. Notwithstanding the national treatment provisions of Article XVI, paragraph 1, a Party may maintain screen quota regulations that require the exhibition of cinematograph films of national origin during a specified minimum portion of the screen time actually utilized by exhibitors for the commercial exhibition of all films. Screen quotas shall be computed on the basis of screen time per theatre per year or the equivalent thereof, and shall be subject to consultation.

10. It is understood that for the purposes of Article XVII, paragraph 1, availability of means of payment is considered to be a commercial consideration.

11. The provisions of Article XVII, paragraph 2 (b) and (c), and of Article XIX, paragraph 4, shall not apply to postal services.

12. The provisions of Article XXI, paragraph 2, shall apply in the case of Puerto Rico regardless of any change that may take place in its political status.

13. Article XXIII does not apply to territories under the authority of either Party solely as a military base or by reason of temporary military occupation, or to Nansei Shoto south of 29 degrees north latitude (including the Ryukyu Islands and the Daito Islands), the Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Islands, the status of which is provided for in Article 3 of the Treaty of Peace with Japan signed at the City of San Francisco on September 8, 1951.

14. The most-favored-nation treatment provisions of the present Treaty shall not apply with respect to those rights and privileges which may be accorded by Japan to (a) persons who originated from the territories to which all right, title and claim were renounced by Japan in accordance with Article 2 of the Treaty of Peace with Japan signed at the City of San Francisco on September 8, 1951, or (b) to the native inhabitants, vessels, and products of the islands mentioned in Article 3 of the Treaty of Peace.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Protocol and have affixed hereunto their seals.

DONE in duplicate,

at \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_ one thousand nine hundred fifty \_\_\_\_\_

ATH POUCH  
PRIORITY

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FOREIGN SERVICE DESPATCH

611.944/1-753  
XR 811.05194

FROM : AMEMBASSY, TOKYO  
TO : THE DEPARTMENT OF STATE, WASHINGTON.

1279  
DESP. NO.

January 7, 1953  
DATE

REF : Embdes 1161, December 17, 1952

E FEOL L 61124

|                                  |                           |                                                |              |
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| 2<br>For Dept.<br>Use Only<br>ne | ACTION<br>REC'D<br>JAN 19 | DEPT.<br>I<br>N<br>F<br>O<br>OTHER<br>COMM TAR | REP FE OLI L |
|----------------------------------|---------------------------|------------------------------------------------|--------------|

SUBJECT: Comments on FCN Treaty

*see out pmtel 1451*

Enclosed for the Department's information is a copy of a memorandum prepared for the Ambassador on December 29, 1952, in connection with Japan's Foreign Investment Law and its relation to the FCN Treaty (Enclosure 1). This law conflicts with the provisions of the treaty in various respects, primarily because it imposes on American investors numerous restrictions on the use of profits in Japan. Moreover, in implementation of the law, the Japanese Government limits the remittance and other rights of various types of foreign enterprise. For example, branch offices and firms established before the enactment of this law, many of which operated in Japan long before the war, are excluded from its provisions, and hence have no established rights in the remittance of profits. These and other aspects of the conflict between the Foreign Investment Law and the provisions of the proposed treaty are outlined in the enclosed memorandum.

It is apparent that this law will require amendment if the principles of the treaty are to be honored. The Embassy, believing that it would be best if the law were amended prior to the submission of the FCN Treaty to the Diet for ratification, has discussed informally with officials of the Japanese Government the desirability of drafting amendments for consideration early in the approaching session of the Diet. Some of these officials have indicated their awareness of the need for amending the present law if foreign investment is to be encouraged. Mr. Takio ODA, Director of the Economic Affairs Bureau of the Ministry of Foreign Affairs, and chief representative at the informal discussions on the treaty, is also aware of the United States position that there should be no discriminatory restrictions on foreign capital once it has been permitted entry into Japan.

It is reported that a drafting committee has been established within the Ministry of Finance to consider revisions to the Foreign Investment Law. It is believed that the Ministry of Foreign Affairs and the Ministry of International Trade and Industry support the early amendment of the law. In view of the reconvening of the Diet scheduled for about January 26, the Economic Counselor and the Financial Attache continue in their attempts to expedite Japanese Government action in this respect and intend to discuss the matter personally with Minister of Finance MUKAI as soon as an appointment can be arranged.

There is also enclosed another memorandum (Enclosure 2) prepared for the Ambassador on December 24 in connection with various treaty articles not yet entirely accepted by the Japanese. The text referred to in this memorandum is the draft of December 1952 (an enclosure to the despatch under reference). It is possible of

RWAdams/nll JAN 13 1953

3 Enclosures

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ACTION COPY - DEPARTMENT OF STATE

The action office must return this permanent record copy to DC/R files with an endorsement of action taken.

611.944/1-753

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From Tokyo

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Desp. No. \_\_\_\_\_  
From \_\_\_\_\_

course, that the Japanese may raise additional questions at a later date. The memorandum, however, lists all the points which, in the opinion of the Embassy, may be the subject of further discussions with the Japanese.

Also enclosed are the original and signed copies of 21 memoranda of conversation covering the previous informal discussions between the Embassy and the Ministry of Foreign Affairs. These memoranda, which pertain to meetings held between February 25 and May 12, 1952, have already been forwarded to the Department as enclosures to various despatches. The enclosed copies contain a number of corrections suggested by the Department on the basis of the drafts originally transmitted, and some revisions proposed by the Japanese, of which the Department has already been informed. Some points, however, were not corrected (e.g., the Embassy's erroneous statement concerning entry of "treaty traders", Article II, memorandum on the second meeting, February 27, page 3), since it was believed that such corrections could best be made of record during the final round of informal discussions.

In accordance with the Department's earlier instruction, four copies of the above-mentioned memoranda of conversation were prepared, all of which were signed by Mr. Morio YUKAWA, then Director of the Economic Affairs Bureau of the Ministry of Foreign Affairs, and by the Economic Counselor. The original copies are transmitted for the Department's files; the second and third copies were delivered to the Ministry of Foreign Affairs, with a suggestion that one of them might be filed with the Japanese Embassy in Washington; the fourth copy is held by the Embassy.

With respect to the final, or so-called review, discussions held between October 15 and November 28, 1952, a complete stenographic record kept by the Embassy has been transcribed in rough draft. Since a number of points were left pending at the close of these discussions, most of which are being clarified in continued informal talks between the Economic Counselor and Mr. Oda, it is believed that the preparation of these memoranda would serve little purpose at this time. Much of the material contained in the notes on the review meetings is merely a repetition of position statements recorded in the first memoranda enclosed herewith. It was agreed, therefore, between the Ministry and the Embassy that a summary memorandum will be prepared by the Embassy on the review meetings, covering each article of the treaty and indicating agreement, interpretations, or position statements not previously made of record, or identifying issues, if any, remaining for subsequent formal negotiation.

The Ministry of Foreign Affairs continues its intra-agency discussions on the treaty, particularly with the Ministry of Finance, which is reluctant to accept certain portions of the current text with reference to Articles VII and XII. It is believed that the Ministry of Foreign Affairs is succeeding in reducing the area of disagreement between it and other Ministries, and that it is sincerely attempting to secure acceptance of the treaty in its present form. Mr. Oda appears to understand and sympathize with the United States position and has been most cooperative in seeking to overcome the objections of the Ministry of Finance and other agencies.

Newspaper reports continue to state that agreement is being reached and that the treaty will probably be signed in February 1953. Such statements are, in the Embassy's opinion, attributable to carefully controlled "leaks" in the Ministry

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of Foreign Affairs, which hopes thereby to expedite agreement within the Japanese Government. It is interesting to note that such press reports, which a few weeks ago often listed as many as a dozen issues allegedly pending between the two countries, have recently reduced them to two or three. Although these are basic issues of which the Department is aware (e.g., the "freedom to be allowed foreign investors after their entry", the "question of whether foreigners may buy outstanding shares in Japanese firms without restriction"), the reduced list as reported in the press indicates that other questions have lost their importance, presumably having been accepted by the Ministry of Finance and other agencies.

Officials of the Ministry of Foreign Affairs appear to be optimistic. One of them informed the reporting officer that the Ministry of Finance was slowly becoming reconciled to the present text of the treaty, although it still hoped that the "new limitations" clause (i.e., second sentence, paragraph 2, Article VII) might be deleted. The Ministry's arguments on this point are typical of the vague and tortuous propositions which have consumed so much time during these discussions, and it was hinted that the Ministry might be disposed to withdraw all other objections if its last proposal were accepted.

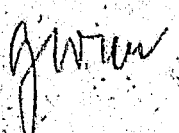
It is difficult to determine at this time what counterproposals may arise from the current discussions between the Ministries of Finance and Foreign Affairs. There are a number of interlocking problems revolving around investment and business activities. There is, moreover, the question regarding the needed amendment to the Foreign Investment Law. A decision in these matters could be reached very shortly, or, on the other hand, the arguments between the two Ministries may continue for some time. The Embassy believes, however, that the Ministry of Foreign Affairs is becoming increasingly anxious to conclude the treaty, which it regards as the first of a number of steps already scheduled in its somewhat ambitious program of treaty negotiations with other countries. It may therefore be able to press for an early decision by the other Ministries. The Embassy continues its attempts, informally and through personal conversations, to point to the advantages accruing from a treaty and the undesirability of continuing restrictive practices if needed foreign investment is to be encouraged. It is not, however, presently engaged in direct discussions with respect to the treaty. Officially, the next step must be taken by the Ministry of Foreign Affairs after it has obtained the final views of all other Government agencies.

For the Ambassador:

  
Frank A. Waring  
Counselor of Embassy  
for Economic Affairs

✓ Enclosures: 

1. Copy of Memorandum to Ambassador Murphy dated December 29, 1952.

  
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From Tokyo

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Desp. No. \_\_\_\_\_

From \_\_\_\_\_

2. Copy of Memorandum to  
Ambassador Murphy dated  
December 24, 1952.
3. Original, signed copies of  
21 Memoranda of Conversation  
on Informal Discussions on the  
FCN Treaty, February 25 to  
May 12, 1952.

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MEMORANDUM

TO: Ambassador Murphy

December 29, 1952

FROM: Mr. Waring

SUBJECT: Proposed Timing for Conclusion of FCN Treaty

Informal discussions on the draft FCN Treaty between the Ministry of Foreign Affairs and the Embassy are now generally regarded as having been concluded. The Ministry is currently engaged in attempting to reconcile divergent views held by other Government agencies on certain basic clauses of the Treaty (e.g., investment activities, and application of exchange controls), and is believed to be pressing for acceptance of the draft treaty in its present form. The Ministry of Foreign Affairs, and presumably the Ministry of International Trade and Industry, are desirous of concluding the Treaty in the near future. The former is particularly anxious since it intends to use this Treaty as a model in various negotiations tentatively scheduled with other countries early in 1953. It is believed therefore that the Embassy could, unless serious objections are raised by the Ministry of Finance or other agencies, ensure conclusion of the Treaty in practically its present form within the next 60 days.

Despite the advantages to be derived from early finalization of the Treaty, one major obstacle requires careful consideration. The Treaty will establish certain rights in connection with investment in Japan which are in contravention to the present Foreign Investment Law (Law No. 163 of 1950) and its many Cabinet Orders, Ministerial Ordinances, and Regulations. The Foreign Investment Law must be revised to conform with the FCN Treaty in three major respects. Rights which must be extended by Japan if the national treatment concept of the FCN Treaty is to be respected, and which are currently denied under the Foreign Investment Law, are:

1. Branch offices of American firms should be permitted freely to engage in business in Japan after initial "screening" of their investment and should be accorded the right to remit profits on a national and most-favored-nation treatment basis.

(COMMENT: The present Foreign Investment Law limits itself to regulating the activities of foreign-owned Japanese juridical persons. Branches of foreign firms therefore have no rights of remittance of profits, et cetera, except as may be accorded in each instance by the Ministry of Finance.)

2. After initial "screening" of investment (at which time Japan may restrict or prohibit the investment), foreign capital should be accorded national treatment without reservation, except as specified in Article VII of the FCN Treaty. A foreign investor who, for example, is entitled to remit up to 100 percent of his profits, should, at his discretion, be allowed to retain some of his local proceeds in yen and reinvest in other non-reserved fields of industry or commerce.

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(COMMENT: At the present time, yen holdings of foreign investors are practically frozen, and no further local investment, even in associated industries, is permitted without the individual approval of the Ministry of Finance. Such approval is not granted for the acquisition of outstanding stock in Japanese industries, and is difficult to obtain even in the case of new issues of stock, acquisition of which is permitted under the Foreign Investment Law. This restrictive practice is regarded as unduly discriminatory to foreign investors.)

3. Foreign interests, both branch offices and foreign-owned domestic corporations, which were established in Japan prior to the enactment of the Foreign Investment Law should be brought within the scope of this law at least to acquire definitive rights in the remittance of profits.

(COMMENT: Older firms, many of them established many years before the war, are excluded from the provisions of the Foreign Investment Law and hence have none of the rights accorded to new firms. Whereas the latter may remit all their profits, older firms must apply for special permission periodically, and are usually permitted by the Ministry of Finance to remit between 30 and 50 percent of their profits. The yen balance is, of course, subject to the same unnecessary restrictions on re-investment applicable to the newer investors.)

Responsible officials of the Ministry of Foreign Affairs and the Ministry of International Trade and Industry have indicated informally that revisions to the Foreign Investment Law along the lines indicated above are desirable for the encouragement of investment in Japan. They stated that they would attempt to persuade the Ministry of Finance of the desirability of such revisions and promised to attempt to expedite the drafting of the required amendments for early submission to the Diet. The Ministry of Finance is, of course, the agency primarily responsible and must take the initiative. The undersigned and the Financial Attache are currently endeavoring to persuade officials of the Ministry of Finance to take necessary action for submission of these amendments as early as possible in the next session of the Diet.

It is considered most desirable in connection with the ratification of the FCN Treaty, that the amendments to the Foreign Investment Law be submitted to the Diet before the Treaty. If this be done, the Treaty would be in accordance with Japanese law, either enacted or already under consideration by the Diet. If, on the other hand, the Treaty were to be presented for ratification and the Foreign Investment Law subsequently amended to conform with the Treaty, there might well be cries from the opposition of unwarranted interference by the United States in Japan's domestic legislation, bitter criticism of a "weak and subservient" foreign policy, and other possible political repercussions detrimental to our best interests.

It is believed therefore that the conclusion of the FCN Treaty should be deferred until such time as the necessary revisions of the Foreign Investment Law

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have been approved by the Diet or, until these have been submitted by the Cabinet to the Diet. Mr. Takio ODA, Director of the Economic Affairs Bureau, Ministry of Foreign Affairs, has indicated his concurrence in this view and is expected to urge the Ministry of Finance to take earliest action.

It is suggested that you may wish to call this problem to the attention of Minister OKAZAKI, possibly on some informal occasion, to impress him with the need for definitive action by the Ministry of Finance prior to the conclusion of the FCN Treaty. The problem can be summarized briefly as follows:

The present Foreign Investment Law establishes restrictions over the activities of foreign investors in Japan which constitute treatment far less favorable than the national and most-favored-nation treatment called for under the FCN Treaty. The United States cannot retreat from its position in this matter and has already advised the Ministry of Foreign Affairs that it prefers no treaty at all to one which would recognize the existence of such discriminatory treatment as is accorded under the Foreign Investment Law. These restrictions are regarded not only as inappropriate and unnecessary (there being adequate safeguards in the FCN Treaty with respect to Japan's balance-of-payments position), but also a deterrent to the foreign investment which Japan has stated it desires and urgently requires.

RWAdams/nll

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MEMORANDUM

TO: Ambassador Murphy  
FROM: Mr. Waring  
SUBJECT: Draft FCN Treaty

December 24, 1952.

The attached folder contains a mimeographed copy of a revised draft of the FCN Treaty, 15 copies of which were forwarded to the Department under cover of the Embassy's Despatch 1161 of December 17. This draft, prepared at the request of the Department, includes all revisions agreed upon between the Ministry of Foreign Affairs and the Embassy as of December 12. It is designed to furnish the Department with a clean draft incorporating all changes to date in the text of the Department's model treaty and to facilitate the telegraphic transmittal of such additional Japanese proposals as may be presented to the Embassy.

Agreement has not yet been reached with the Japanese Government on certain articles of the attached draft. As of December 12, however, there were no proposed revisions or suggestions for alternative phraseology pending on the Japanese side. The attached draft therefore approaches a definitive working draft of the Treaty for formal negotiation, and generally represents the final views and concessions of the Department.

Since the preparation of this draft the Ministry of Foreign Affairs has made two specific proposals:

1. Use of the term "The Government of Japan" in the Preamble (page 1). This has been submitted to the Department for consideration in view of our use of the term "The President of the United States".
2. The insertion of the phrase "and trade with" in paragraph 14 of the Protocol (page 37). The Embassy has recommended acceptance of this addition.

Representatives of the Ministry of Foreign Affairs are now fully cognizant of our firm position with respect to certain significant clauses, modification of which would, in our opinion, destroy the meaning of the Treaty. The Ministry's officials appear to agree generally with our position and to be attempting sincerely in their discussions with other Ministries to secure an acceptance of our views. It is possible, however, that the latter, particularly the Ministry of Finance, will continue to press for major revisions on points which may therefore require further discussion or negotiation.

The major issues which may arise concern the articles listed below:

Article VI, Paragraph 3 (page 7)

Compensation for property seized for public purpose by either Government must be in effectively realizable form under the terms of

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Article VI of the draft FCN Treaty. The Japanese have questioned this concept since Japanese law permits compensation in kind in certain cases involving expropriation of property. The Japanese Supreme Court has held, for example, that when real property is taken for public purpose compensation may take the form of a substitute piece of real property of approximately the same size or value at a location to be determined by an appropriate Government agency.

The Embassy has informed the Ministry of Foreign Affairs that compensation in kind is permissible provided the substitute property is acceptable to the individual affected, or, alternatively, is of a type and in a location which would facilitate its ready sale. Our position therefore is that the concept of compensation in effectively realizable form must be maintained.

The Ministry of Foreign Affairs has indicated that it believes a statement of our position (already included in one of the memoranda on the informal discussions between the Ministry and the Embassy) will suffice since it is understood that inadequate or improper compensation to an American national would in each instance be the subject of diplomatic correspondence between the two Governments. This point is not a serious one and it is anticipated that the Japanese Government will accept Article VI in its present form. It is possible, however, that the Ministries of Finance and Agriculture may again wish to revise the clause in question.

Article VII (page 8)

The Japanese wish to exercise rigid control over foreign investment even beyond our concession on the "screening" of investment on balance-of-payments grounds (please see Protocol, paragraph 6 - page 35). The Japanese also wish to apply extraordinary restrictions on foreign investment activities even after initial "screening" despite our firm position that national treatment must then apply. The Ministry of Finance particularly wishes to restrict the activities of foreign banks (especially American banks) by including "loan functions" among the reserved categories mentioned in paragraph 2 of Article VII.

Article XI, Paragraph 1 (page 14)

A new development with respect to national treatment in taxation matters has arisen in informal conversations with a Ministry of Finance official recently in Washington for negotiations on the bilateral taxation convention. He alleges that reciprocity is lacking in the FCN Treaty because the residence concept is meaningless. He declares that Japanese entering the United States as "treaty traders" or "treaty investors" will not be regarded as "residents" by the U.S. Treasury, although Americans so entering Japan will receive national treatment as residents of this country. This is, of course, quite true since "treaty traders" under our immigration laws are granted non-resident entry of indefinite duration subject to specific restrictions. Only Japanese

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entering the United States as quota immigrants under the new law will acquire residence rights. It is possible that this point may be raised at a later date by the representatives of the Ministry of Foreign Affairs. It is not believed that the Department would consider any revision to the residence concept contained in this paragraph.

Article XII, Paragraphs 1 and 2 (page 16)

Questions may arise in connection with the relationship between this Article and Article VII (i.e., restrictions on investment activity). In lieu of the broad concept of national and most-favored-nation treatment of paragraph 1, the Ministry of Finance apparently desires to extend this treatment only with respect to current transactions. It desires to accord less favorable treatment to capital transactions (e.g., withdrawal of investment, transfers of funds, et cetera). This distinction is unacceptable to the United States and it is believed that the Ministry of Foreign Affairs and the Ministry of International Trade and Industry share our view that the broad principle contained in paragraph 1 is appropriate and desirable for Japan if needed foreign investment is to be encouraged. The Ministry of Finance also appears to be reluctant to limit its right to impose exchange restrictions solely on the basis of the criteria established in paragraph 2 (i.e., solely to safeguard its monetary reserves). Other clauses in this Article not presently in question may be contested by the Ministry of Finance at a later date.

Article XIV, Paragraph 3 a (page 19)

The Japanese have objected to the requirement that prior public notice be given in connection with the announcement of import quotas. The obvious need for such prior notice if businessmen are to engage in international trade has been recognized by the Ministry of Foreign Affairs. It is possible, however, that the Ministry of International Trade and Industry may again demand the deletion of this phrase on the grounds that such advance notice might adversely affect world prices of essential raw materials required by Japan.

Protocol - Possible Additional Paragraph 15 (page 37)

The Ministry of Foreign Affairs has raised the question of the inter-relationship between the FCN Treaty and Article 12 of the Treaty of Peace. The Japanese representatives point out that the latter obliges Japan reciprocally to extend various rights and privileges to the nationals of a foreign country whenever the latter unilaterally decides to accord such rights to Japanese nationals. They allege that this obligation on the part of Japan implies that it may be forced to extend rights under the Treaty of Peace which it might not normally concede on the basis of a bilateral FCN Treaty between two sovereign powers. Article 12 of the Treaty of Peace further provides, however, that it shall be effective between Japan and any one of the signatories only until such time as an appropriate treaty of commerce and navigation is concluded

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From Tokyo

between them, or, alternatively, for a period of four years, i.e., until September 2, 1955, whichever is the sooner.

The Japanese are therefore considering an additional paragraph (presumably not yet drafted) to the Protocol by which the United States would waive the most-favored-nation provisions of the FCN Treaty with respect to any and all rights granted to foreigners by Japan pursuant to its obligations under Article 12 of the Treaty of Peace. Such a sweeping reservation is believed by the Embassy to be entirely unacceptable since it would vitiate the most-favored-nation treatment envisaged in the FCN Treaty and would, moreover, negate possible rights now, and until 1956, enjoyed by the United States in common with other signatories to the Treaty of Peace. Should the Japanese insist on entering a reservation in this connection the Embassy would recommend that the Department consider a clause which would fully safeguard the most-favored-nation concept until September 2, 1955 and relinquish at that time such extraordinary privileges as may be based solely on Japan's obligations under the Treaty of Peace.

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## Department of State

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DECLASSIFICATION DATE 12/17/79

PER Harvey OFFICE LOCFADRC FOI CASE NO. 7902999

AMEMBASSY,

TOKYO.

A-512 January 8, 1953

FCN Treaty. Embassy despatch 1161 of Dec. 17,  
and DEPT A-476 of Dec. 23.

With reference to the question regarding the Preamble, the Department proposes that the designation of the appointing authorities be "The United States of America" (in lieu of "The President of the USA") and "Japan", respectively. This would keep the designations parallel, and consistent with the references in the first line of the Preamble. A formula reciting "the government of" is not preferred in a major treaty of this type.

There follows a list of corrections to be made in the revised text transmitted in reference despatch. Most of them have to do with superficial matters such as typographical errors and stylistic preferences. On the whole, the text appears to be in good shape.

Art. IV, para. 1 In the penultimate line, delete the words "any requirement of", as superfluous.

Art. V, para. 1 The phrase "or in the capital, skills, arts or technology which they have supplied", in the 4th-6th lines, should be revised to read "(comma) in their capital, or in the skills, arts or technology which they have supplied." (See DEPT A-315 of Oct. 28).

Art. VI, para. 4 In the fourth line, the word "paragraph" should be plural.

Art. VII, para. 1 The DEPT believes it might be desirable to revise the phrase "other activity for profit (business activities)", in the 3rd-4th line, to read simply "other business activity". The standard phraseology was

originally

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originally formulated to facilitate translation into other languages (e.g., French) that have difficulty with the American concept "business", and it is not supposed that, in view of the extent to which the Japanese have become accustomed to English as a commercial language, it should be necessary to have parenthetical explanatory phraseology in a treaty with Japan. The revision now suggested would, moreover, have a public relations advantage, that certain insurance circles have expressed a fear lest the reference to "profit" be susceptible of being interpreted (erroneously, in the Department's view and intent) as excluding the insurance business.

Art. VII, para. 2 In the ninth line, insert a comma between "territories" and "shall".

Art. VII, para. 3 In the first line, insert the words "of the present Article" after "paragraph 1".

Art. VIII, para. 2 In the fifth line, insert the word "(comma) residence" after "qualifications", so that the provision will be identical with that in the Israel treaty.

Art. IX, para. 1 In the sixth line, insert a comma after the word "purposes". At the end of the paragraph, either delete the clause "or any subdivisions, Territories and possessions thereof", or substitute the word "including" for the word "or". The word "Party" as used in the treaty comprehends of itself, where relevant, the various subordinate areas and jurisdictions of the country as well as the central government. It would not be appropriate to employ here phraseology that might suggest this to be true only of the real property provision.

Art. IX, para. 3 Capitalize the word "treaty" in the last line.

Art. IX Reverse the order of paragraphs 2 and 3 for more logical arrangement of materials.

Art. X

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Art. X As this Article now consists of a single paragraph, delete the numeral "1".

Art. XIII In the fifth line, the phrase "in respect to" should read "in respect of".

Art. XIV, para. 7 In the first line, the word "paragraph" should be plural. In the sixth line, insert the words "or controls" after "restrictions", for purposes of completeness of reference.

Art. XV, para. 1 In the beginning of the sixth line, the word is "therefor".

Art. XV, para. 2 In the fourth line, place a comma after the word "warranted".

Art. XVIII, para. 1, last line. The word "eliminate" should be "eliminating".

Art. XVIII, para. 2 In clause lettered "(a)", capitalize the word "government" where it is used as a noun.

Art. XIX In the reorganization of the exceptions clause of paragraph 3 as it stood in DEPT'S original draft, the reservation for national fisheries has somehow become lost, and will need to be restored. DEPT proposes that this be done by inserting the words "(comma) national fisheries" after "coasting trade" in the third line of paragraph 3 of the revised text.

Art. XX Bring the word "Such" to the line, as each treaty paragraph should form but a single grammatical paragraph. The cross-reference in the antepenultimate line should be to Article I.

Protocol 1 The cross-reference should be to Article IV.

Protocol 5

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Protocol 5 The phrase "profession of notary public or port pilot" might be revised to read "professions of notary public and port pilot".

Protocol 8 In the sixth line, the word "these" should either be deleted or changed to "those". In the ninth line, delete the words "over the internal distribution of imported articles", as the antecedent of the expression "such controls" is clear without them; and, moreover, a spelling out would require the full phrase "sale, distribution or use".

Protocol 9 In the fifth line, correct the spelling of word "exhibitors".

Protocol 13 In the seventh line, the reference to Marcus Island has been inadvertently pluralized. Delete the words "the City of".

Protocol 14 In the fourth line, the expression "originated from" should be "originated in". In the seventh line, the word "to" immediately following the letter "(b)" should be deleted as redundant. Also delete the words "the City of". In the eighth line, insert the word "said" before "Treaty".

Final clause This will, of course, be identical with its counterpart at the end of the treaty proper.

Art. XIV, para. 4 Delete comma following word "sanitary" in second line.

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*Acheson*  
(V.G.L.)

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U/FW (Art. XIX) (Mr. Taylor)  
L/E JDN  
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